

STORM WATER AND RIVER RESTORATION EASEMENT

THIS GRANT OF STORM WATER MANAGEMENT AND RIVER RESTORATION EASEMENT AND RIGHT-OF-WAY (the "Easement"), made this _____ day of _____, 20____, is by and between _____, its successors and assigns ("Grantor") and OGDEN CITY, a Utah municipal corporation, ITS SUCCESSORS AND ASSIGNS ("City"). Grantor and City are hereinafter referred to collectively as "the Parties".

WHEREAS, Grantor is the owner of certain real property located in Weber County, Utah (the "Property") which is more particularly described in **Exhibit A**, which is attached to this Easement and incorporated herein as if fully set forth; and

WHEREAS, City has proposed to make substantial improvements to the Ogden River corridor by realigning the floodway alignment, returning the river to a more natural state, and improving its capacity to receive and transport storm water thereby creating and supporting a more healthy ecosystem for river plants, fish, and other species that naturally inhabit riparian environments (the "Project"); and

WHEREAS, the changes to the Ogden River proposed as part of the Project will enhance Grantor's Property by making flooding less likely and enhancing future development potential on those Portions of the Property not needed to complete the Project; and

WHEREAS, Grantor has agreed to provide an easement to City over, through, and under the Property to construct and/or to maintain the proposed storm water management facilities and river restoration features on the Property that are associated with the Project; and

WHEREAS, City has determined to accept the grant of the Easement subject to the provisions stated below;

NOW, THEREFORE, in consideration of the Parties mutual rights, responsibilities and benefits, the Parties agree as follows:

1. Grantor hereby grants to City a perpetual easement over, across and under the area described in **Exhibit B** (the "Riparian Corridor") and shown cross-hatched on **Exhibit C**, which are attached to this Easement and incorporated herein as if fully set forth, for the construction and maintenance of storm water management facilities and associated river stabilization and riparian improvements associated with the Project, including but not limited to constructing, operating, maintaining, repairing, altering, rehabilitating, removing, monitoring and replacing river banks and ecosystem restoration features in and adjacent to the channel of the Ogden River; installing plantings and creating or modifying channels; performing bank stabilization; placing materials, structures or screening in the stream bed or banks that influence fish passage, stream velocity or channel form; removing or placing of gravel or cobbles, boulders, and other structures or conveyances to recharge ground water or maintain flows to wetlands and to enhance fish habitat; realigning the existing river parkway trail as shown on the Project plans, together with improving or creating passive or active public access areas and informational displays along the existing or realigned parkway trail; and commencing and completing each and every other modification, work, or structure deemed necessary or beneficial by City to complete the Project;

2. Grantor agrees that Grantor will not obstruct or permit anyone else to obstruct the Riparian Corridor during the term of this Easement. Grantor will not install any improvements, including paving, patios or other hard surface improvements or construct any building, structure, fence, or other obstruction of any kind in the Riparian Corridor, nor permit anyone else to install improvements, construct any building, structure, fence or obstruction in the Riparian Corridor. Grantor further covenants not to perform or permit any fill or excavation activities or modify the final elevation or placement of any Project feature within the Riparian Corridor without City's prior written consent;
3. City will operate and maintain any pipes, trails, benches, signs, and other above ground structures installed in the Riparian Corridor as part of the Project facilities, except Grantor will repair any damage caused by Grantor's activities in the use of its land; while Grantor and City will work together to maintain and keep in good repair plantings, landscaping, vegetation and natural areas developed as part of the Project;
4. Grantor hereby grants to City a limited construction easement over and across the area described in **Exhibit D** (the "Construction Easement") and depicted on **Exhibit C**, which are attached to this Easement and incorporated herein as if fully set forth, for access to the Project and the temporary storage or staging of equipment, supplies, and materials used to install and complete the Project improvements. The area included in the Riparian Corridor together with the Construction Easement is referred to as the Project Limits;
5. City may utilize the Construction Easement when working on nearby portions of the Project even if Grantee's Property has already been improved or has not yet been improved by the Project. Prior to exercising any right under the Construction Easement, City shall notify Grantee of its intent at least fifteen (15) days before using the Construction Easement and shall cooperate with Grantee to minimize disturbance of Grantee's use of its Property. City's rights under the Construction Easement shall not interfere with Grantor's development of its Property, including but not limited to construction of new buildings or modification of existing buildings located within the Construction Easement;
6. City will at all times have a right of ingress and egress over the Project Limits and the right to enter the Construction Easement or Riparian Corridor via any road, parking lot, or open non-landscaped property located within the Property or any adjacent land owned by the Grantor for the installation, construction, operation, maintenance, repair, alteration, rehabilitation, removal, replacement and monitoring of Project features and improvements;
7. Grantor reserves to itself, and to its heirs, successors, or assigns, all other rights and privileges that may be used without destroying, modifying or otherwise disturbing the work or improvements constructed in the Riparian Corridor or, in any manner, interfering with or abridging the enumerated rights and easement hereby conveyed and acquired;
8. No covenant or agreement contained in this Easement shall inure to the benefit of any party other than Grantor and City and their respective successors and assigns;
9. All of the covenants, agreements, and conditions contained in this Easement run with the land and shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns;
10. Grantor warrants that it has the authority to enter into this Easement agreement for the land described in **Exhibit A**, specially warrants the easements described herein subject to any existing easements of record, and agrees to execute, acknowledge, and deliver to or for City such further instruments and take such further actions as may be reasonably required to carry out and effectuate the intent and purpose of this Easement, or to confirm or perfect any right created hereunder;

11. In the event of any breach, or threatened breach, of this Easement by either party hereto, the non-defaulting party shall have the right to any remedy available at law or in equity, including but not limited to, injunctive relief and specific performance;
12. Prior to commencing work within the Project limits, City shall obtain all necessary permits and authorizations, and comply with all laws and regulations, including stream channel alteration permits from the State Engineer and 404 (wetland) permits from the U.S. Army Corps of Engineers;
13. It is the Parties intent that any public access or use of the land included in the Riparian Corridor is limited to the existing or realigned parkway trail, access or use areas as shown on the Project plans, or the water in the Ogden River, which access and use shall be allowed by Grantor without charge with the objective of providing Grantor the landowner liability protections set forth in Utah Code §§ 57-14-1 through 57-14-7, or its successor provisions;
14. This Easement constitutes the entire agreement between the Parties and may not be modified, amended, or terminated except by an instrument in writing signed by both of the Parties;
15. This Easement shall be recorded with the office of the Weber County Recorder and shall be governed and construed in accordance with the laws of the State of Utah and the ordinances of Ogden City;
16. Any forbearance by either the City or the Grantor in exercising any right or remedy afforded under this Easement or by law shall not be a waiver or preclude the exercising of any such right or remedy; and
17. Invalidation of any one of these terms or provisions by any Court shall in no way affect any other provisions, which shall remain in full force and effect.

WHEREFORE, the Parties have executed this Easement on the date first above written.

GRANTOR(S):

Signature

Printed Name

Title

